

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Richard Edward and Sherry Anne Roen**

**Chapter 7**

**Debtor(s).**

**BK 04-50598**

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**UNITED STATES TRUSTEE'S MOTION TO EXTEND TIME TO  
BRING MOTION TO DISMISS UNDER 11 U.S.C. § 707(b)**

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COMES NOW the United States Trustee through his undersigned attorney, Sarah J. Wencil, and moves the Bankruptcy Court for an Order to extend the time to bring a motion to dismiss pursuant to 11 U.S.C. § 707(b). In support of his motion, he states the following:

1. The Court will hold a hearing on this motion at 1:30 p.m. on October 6 2004, in Courtroom 2, Fourth Floor, United States Courthouse, 515 West First Street, Duluth, Minnesota.
2. Any response to this motion must be filed and delivered not later than October 1, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than September 27, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays).  
  
Local Bankruptcy Rule 9006-1. UNLESS A RESPONSE OPPOSING THE MOTION IS  
  
TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
3. This motion is filed pursuant to FED. R. BANKR. P. 1017(e) and 9006 and Local Bankruptcy Rules 9013-2 and 9006-1(d). The Court has jurisdiction over this motion pursuant to 28

U.S.C. §§ 1334 and 157(a), FED.R.BANKR.P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 7 case was filed on March 18, 2004

4. The United States Trustee requests that he be granted additional time to consider bringing the Section 707(b) motion.

5. On July 1, 2004, the United States Trustee wrote to the debtors for additional financial information. The debtors responded to that request for information.

6. In evaluating the information, the U.S. Trustee discovered several assets that were not accounted for in the Schedules and Statement of Financial Affairs: 1996 Dodge, 2000 Indian Motorcycle, and some bank accounts that may be concealed or misidentified on Schedule B.

7. Attached are current DMV records obtained by the Office of the United States Trustee showing that the debtors have current title to the 1996 Dodge and 2000 Indian Motorcycle. Ex. 2.

8. The Chapter 7 Trustee wrote to counsel for the debtors for an explanation regarding these assets. Ex. 3.

9. Upon information and belief, no response was received. However, the Chapter 7 Trustee has opined, and the United States Trustee does not dispute, that the failure to respond may have been caused or influenced by medical issues of debtor's counsel and not by indifference.

10. The U.S. Trustee seeks an extension of the Section 707(b) period to determine what the debtors' response to the letter dated July 27, 2004 will be prior to pursuing a Section 707(b) motion.

11. The United States Trustee has reviewed the materials provided in response to the July 1, 2004 letter, and believes that he has a basis for the Section 707(b) motion. However, such a

motion would be at odds with a Section 727 complaint.

12. The United States Trustee requests that the period to file a Section 707(b) motion be extended to November 30, 2004.

WHEREFORE, the United States Trustee requests that the Bankruptcy Court extend the period of time to file a motion to dismiss pursuant to 11 U.S.C. § 707(b) to November 30, 2004.

Dated: August 27, 2004

HABBO G. FOKKENA  
United States Trustee  
Region 12

/s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney  
Office of U.S. Trustee  
Iowa Atty. No. 14014  
U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, MN 55415  
TELE: (612) 664-5500  
FAX: (612) 664-5516

# Exhibit 1



**U.S. Department of Justice  
United States Trustee**

*Districts of Minnesota, North Dakota,  
South Dakota and Iowa*

*U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, Minnesota 55415*

*(612) 664-5500  
FAX (612) 664-5516*

July 1, 2004

William Sweeney  
416 North Central Ave.  
Duluth, MN 55807

Re: Richard & Sherry Roen  
Bankruptcy No: 04-50598

Dear Mr. Sweeney:

As you are aware, the Office of the United States Trustee must investigate every debtor pursuant to 11 U.S.C. § 707(b). There is incomplete information in the above named case for our office to complete its investigation. Please provide the following information on or before July 18, 2004:

1. Copy of last four pay stubs for each debtor.
2. Provide any documentation showing that reduction for retirement is mandatory (if nothing is submitted, the United States Trustee shall assume that it is a voluntary contribution).
3. Copy of the 2001, 2002 and 2003 state and federal tax return, including attachments (W-2s, 1099s, etc) and "all" schedules.
4. Copies of check stubs or receipts for last three mortgage payments, both 1<sup>st</sup> & 2<sup>nd</sup> mortgage.
5. Copy(s) of most recent real estate tax statement.
6. Copies of all car payment coupons and ATV payment coupon.
7. Copies of billing statements, checks or receipts for last three months or other time period specified of the following expenses:
  - A) **Electricity and Heating Fuel** - (provide copies of 12 months billing statements from each utility source)
  - B) **Telephone & Cell Phone** - (provide copies of 12 months billing statements from each utility source)

- C) **Satellite/Cable** - (provide copies of billing statements)
- D) **Home Maintenance** - (provide copies of billing statements, receipts or checks and detailed explanation of improvement)
- E) **Transportation** - (provide copies of cancelled checks, invoices or receipts)
- F) **Recreation** - (provide copies of billing statements, receipts or checks)
- G) **Charitable Contributions** - (provide copies of cancelled checks or receipts for cash contributions or statements showing the cash contributions)
- H) **Personal Items** - (provide detailed list and copies of canceled checks, receipts or invoices)

8. Copies of complete bank statements from all checking, savings, investment or other financial accounts beginning with May, 2003 thru May, 2004.
9. Provide explanation for Schedule F debt to M&I Bank as to whether the \$19,858.93 is the deficiency balance owed after the sale of the Durango by the bank or was it the balance owed the bank at the time of repossession. If the amount is the balance owed at the time of repossession provide the deficiency balance owed after the sale of the vehicle by the bank.

Please call if you have a question or concern about this letter.

Sincerely,

By, 

Greg Biedermann  
Senior Bankruptcy Analyst

cc: Debtors  
Robert Kanuit, Trustee

## Exhibit 2

**Motor Vehicle Query 8/3/2004 7:28:22 AM tefrazer Station: 6149 Deputy:**

Title		Printed		Suspense		Liens	Flags	Files
H1270P816		Y		N		0		
Plate		VIN			Exp.	Sticker	Tax	Prv. Plt
51086MD (140)		5CDCNB518YG003140			02 05	E8066763	10.00	
Year	Make	Model	Style	Color		Class	Empty Wt	
2000	INDI			RED RED		16		
Transfer Date		Last Trans		First Sale	Base	Odometer	Reissue YR	
		R 04 02 04		03 19 2002	000000	0000857		
Owner				DOB		ID		
ROEN RICHARD EDWARD				12 30 1961		R500738189995		
ROEN SHERRY ANNE				11 25 1960		R500765067902		
Street				City		County/State		Zip
220 ST LOUIS RIVER RD E				DULUTH		CARLTON		55810

Secured Party # 1				Date
Street	City	State	Zip	

**PLATE/STICKER INFORMATION**

Key	Status	Year	Class	Weight	Issued By	Updated	Allocated
51086MD	(SOLD)	87	MC		007 BRAINERD	05/07/02	09/07/01
Key	Status	Year	Class	Weight	Issued By	Updated	Allocated
E8066763	(SOLD)	05	SY		037 CLOQUET	04/02/04	12/10/02



Motor Vehicle Query 8/3/2004 7:26:05 AM tefrazer Station: 6149 Deputy:

Title		Printed		Suspense		Liens	Flags	Files
D1620J714		Y		N		1		
Plate		VIN			Exp.	Sticker	Tax	Prv. Plt
KSR761 (299)		3B7HC13Y6TG167299			06 05	E1569575	56.00	182NCS
Year	Make	Model	Style	Color		Class	Empty Wt	
1996	DODG	RPC	PC	RED RED		10	04	
Transfer Date		Last Trans		First Sale	Base	Odometer	Reissue YR	
05 16 97		R 07 01 04			018466	0005738	10	
Owner					DOB		ID	
ROEN RICHARD EDWARD AND					12 30 1961		R500738189995	
ROEN SHERRY ANNE					11 25 1960		R500765067902	
Street				City		County/State		Zip
220 ST LOUIS RIVER RD E				DULUTH		SAINT LOUIS		55810

## SECURED PARTIES

Secured Party # 1							Date
DULUTH CITY & CO EMPL CR UN							05 08 97
Street				City		State	Zip
320 W 2ND ST #615				DULUTH		MN	55802

## PLATE/STICKER INFORMATION

Key	Status	Year	Class	Weight	Issued By	Updated	Allocated
KSR761	(SOLD)	97	P		169 DULUTH	06/18/03	01/22/03
Key	Status	Year	Class	Weight	Issued By	Updated	Allocated
E1569575	(SOLD)	05	DY		169 DULUTH	07/01/04	05/07/04

PREVIOUS OWNERS  
PRIOR OWNER 1

Title	Transfer Date	Exp	Odometer
D2010H437		0697	0000022
Owner			DOB
GE CAPITAL AUTO LSG			00 00 0000
Street	City	State	Zip
PO BX 3310	BARRINGTON	IL	60011-3310

# Exhibit 3

707(R) *Itu*  
*Aug*

RECEIVED



ATTORNEYS AT LAW

ROBERT R. KANUIT\*\*  
JOHN H. BRAY

2004 JUL 29 A 10 29

OFFICE OF THE  
UNITED STATES TRUSTEE

July 27, 2004

Mr. William R. Sweeney  
Attorney at Law  
416 North Central Avenue  
Duluth, MN 55807

COPY

RE: Bankruptcy Case No.: 04-50598  
Debtors: Richard and Sherry Roen

Dear Mr. Sweeney:

I have information that your clients have been paying for insurance on a 1996 Dodge 150 pickup and a 2000 Indian motorcycle. Neither of these vehicles were disclosed on your clients' Schedule B. Do your clients own these vehicles?

In addition, I have information that your clients have an IRA and a Plumbers account at the Hermantown Federal Credit Union that were not disclosed either. Please advise your clients to explain this to me in writing within thirty (30) days of the date of this letter, or I will be making a motion to reopen the case and subsequently a motion for turnover of information, which could ultimately result in your clients' discharge being revoked.

Thank you.

Sincerely,

Robert R. Kanuit

RRK:bkp

pc: Greg Biedermann, United States Trustee's Office

North Shore Bank Place  
4815 West Arrowhead Road  
Suite 230  
Hermantown, MN 55811  
Phone 218.722.7722  
Fax 218.722.7744  
Web [kanuitbraylaw.com](http://kanuitbraylaw.com)

## **VERIFICATION**

I, Sarah J. Wencil, attorney for the United States Trustee, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: August 27, 2004

Signed: /s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Richard Edward and Sherry Anne Roen**

**Chapter 7**

**Debtor(s).**

**BK 04-50598**

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**MEMORANDUM OF LAW**

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The United States Trustee through his undersigned attorney, Sarah J. Wencil, files this Memorandum of Law in support of his motion to extend the time to bring a motion to dismiss pursuant to 11 U.S.C. § 707(b).

A motion for an extension of time to file a motion to dismiss under 11 U.S.C. § 707(b) is governed by Fed. R. Bankr. P. 1017(e)(1), which provides in part:

A motion to dismiss a case for substantial abuse may be filed by the United States trustee only within 60 days after the first date set for the meeting of creditors under § 341 (a), unless, on request filed by the United States trustee before the time has expired, the court for cause extends the time for filing the motion to dismiss. The United States trustee shall set forth in the motion all matters to be submitted to the court for its consideration at the hearing.

FED. R. BANKR. P. 1017(e)(1).

Cause exists to extend the period of time to file a Section 707(b) in this case. There are issues pending regarding undisclosed assets, and the United States Trustee requests that the time period to file a Section 707(b) motion be extended so that the debtors have an opportunity to respond to the inquiry regarding those assets. The motion is not based on the failure of the U.S. Trustee to review or investigate this case, but is based on the fact that a Section 707(b) motion would be at odds with a 727

complaint. It is not possible to determine what is in the best interests of creditors at this stage.

The debtor is not prejudiced by the United States Trustee's request. The debtor will benefit from having the time period extended, instead of facing a formal motion to dismiss. The debtor is also on notice or should be on notice of the Chapter 7 Trustee's inquiry regarding the undisclosed assets.

The U.S. Trustee requests that the Bankruptcy Court extend the time period to file a motion to dismiss pursuant to 11 U.S.C. § 707(b) based on the factors set out in the motion. The United States Trustee respectfully requests that the Bankruptcy Court extend the period of time to file a motion to dismiss pursuant to 11 U.S.C. § 707(b) to November 30, 2004.

Dated: August 27, 2004

HABBO G. FOKKENA  
United States Trustee  
Region 12

/s/ Sarah J. Wencil  
Sarah J. Wencil  
Trial Attorney  
Office of U.S. Trustee  
Iowa Atty. No. 14014  
U.S. Courthouse, Suite 1015  
300 South Fourth Street  
Minneapolis, MN 55415  
TELE: (612) 664-5500

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Richard and Sherry Roen**

**Chapter 7**

**Debtor(s).**

**BK 04-50569**

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**CERTIFICATE OF SERVICE**

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I, Terri Frazer, certify under penalty of perjury that I am an employee in the Office of the United States Trustee for the District of Minnesota and am a person of such age and discretion as to be competent to serve papers and that on August 27, 2004, I caused to be served the following: United States Trustee's Motion to Extend Time to File Motion to Dismiss pursuant to 11 U.S.C. § 707(b), Memorandum of Law and proposed Order, and United States Trustee's Motion to Extend Time to File Complaint to Revoke Discharge pursuant to 11 U.S.C. § 727, Memorandum of Law and proposed Order on the entities listed below by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

**Addressee(s):**

Richard and Sherry Roen  
220 St. Louis River Road East  
Duluth, MN 55810

William R. Sweeney  
416 N. Central Avenue  
Duluth, MN 55807

Robert Kanuit  
Kanuit & Bray  
North Shore Bank Place  
4815 West Arrowhead Road Suite 230  
Hermantown, MN 55811

  
\_\_\_\_\_  
**Office of the United States Trustee  
Terri Frazer**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

**In re:**

**Richard Edward and Sherry Anne Roen**

**Chapter 7**

**Debtor(s).**

**BK 04-50598**

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**ORDER**

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At Duluth, Minnesota, this \_\_\_\_\_ day of \_\_\_\_\_, 2004, the United States Trustee's Motion to Extend Period to File Motion to Dismiss pursuant to 11 U.S.C. § 707(b) came before the undersigned. Appearances are noted in the record.

Based on the pleadings, files the arguments of parties, the findings of fact and conclusions of law made on the record, the Court being fully advised of the premises –

**IT IS HEREBY ORDERED:**

1. The motion to extend the time period set by FED. R. BANKR. P. 1017(e) is granted.
2. The period of time for the U.S. Trustee to file a motion to dismiss pursuant to 11 U.S.C. § 707(b) is extended to November 30, 2004.

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Chief Judge Gregory F. Kishel  
United States Bankruptcy Judge